

Internal Revenue Service
memorandum

date: **JUN 27 1988**

to: Eugene H. Ciranni, Special Trial Counsel, District Counsel's
Office, San Francisco, California

from: Chief, Branch 2, Tax Litigation Division CC:TL

subject: Treatment of [REDACTED] under Treas.
Reg. Section 1.1502-77(d)

We understand that [REDACTED], a Hawaii corporation, was for a number of years the parent corporation for an affiliated group filing consolidated returns. On [REDACTED], [REDACTED] was merged into a transitory subsidiary of [REDACTED] in a leveraged buyout. Appeals has indicated, we think accurately, that that transaction was not a reverse acquisition under Treas. Reg. 1.1502-75(d)(3). [REDACTED] was the survivor of the merger, and continued to exist as a subsidiary of [REDACTED]. At some point [REDACTED] transferred its [REDACTED] stock to another of its wholly-owned, Hawaii subsidiaries, [REDACTED]. On [REDACTED], [REDACTED] was merged into [REDACTED]. On [REDACTED], [REDACTED] was merged into [REDACTED]. On [REDACTED], [REDACTED] was liquidated, and its assets and liabilities were transferred to the [REDACTED].

The [REDACTED] group's tax years [REDACTED], [REDACTED], [REDACTED] and [REDACTED] (short year) are under audit. These are the years prior to [REDACTED]'s acquisition of [REDACTED]. While the facts are not entirely clear, it appears that around [REDACTED] or [REDACTED], consents were obtained, signed by [REDACTED], to extend the period for assessment as to the [REDACTED] and [REDACTED] tax years of the [REDACTED] group until [REDACTED]. We have received from Appeals, furthermore, a Form 832-A, signed by [REDACTED] on [REDACTED], extending indefinitely the assessment period for the [REDACTED] group's [REDACTED] and [REDACTED] years. We also understand that around [REDACTED] consents were obtained, signed by [REDACTED], purporting to extend the assessment as to the [REDACTED] and [REDACTED] years of the [REDACTED] group until [REDACTED]. We have received from Appeals (1) a Form 872, signed by [REDACTED], and (2) a Form 977, signed by the Trustee, purporting to extend the assessment as to those years until [REDACTED]. You have asked whether these most recent forms were signed by the right entities in light of Reg. 1.1502-77(d).

It appears to us that the assessment period has been effectively extended as to the [REDACTED] and [REDACTED] tax years. [REDACTED] was the appropriate agent for the [REDACTED] group as long as [REDACTED] remained in existence. [REDACTED] therefore appropriately signed the [REDACTED] extension, prior to [REDACTED]'s termination in the [REDACTED] merger

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with [REDACTED]. By the same token, because [REDACTED] continued to be agent for the [REDACTED] group, the consents signed by [REDACTED] around [REDACTED] for the [REDACTED] and [REDACTED] years of the [REDACTED] group were probably invalid. Since nothing can be done with respect to that problem, however, we will assume for purposes of our further advice that those consents for the [REDACTED] and [REDACTED] years were valid.

1. [REDACTED] with Agency.

Under Sections 417-13 and 417-42 of the Hawaii Revised Statutes, [REDACTED] ceased as a corporate entity in the [REDACTED] merger with [REDACTED]. Therefore, under Reg. 1.1502-77(d), [REDACTED]'s power as agent for the [REDACTED] group also ceased. Accordingly, we doubt that either [REDACTED], [REDACTED] or the [REDACTED] ever actually succeeded to [REDACTED]'s agency status with respect to the [REDACTED] group. There is no point in precluding this possibility, however. Accordingly, we suggest that you obtain the consent of [REDACTED], successor agent to [REDACTED], "naming as the taxpayer [REDACTED]." In that connection, we note that under Delaware law, [REDACTED] continues in existence for 3 years for purposes of winding up its affairs, so [REDACTED] should be able to sign the consent.

2. [REDACTED] with individual liability and powers as successor-in-interest.

Under state statute many rights and powers automatically pass from a merged corporation to the survivor. Thus, after [REDACTED] merged into [REDACTED], [REDACTED] became able to bind [REDACTED] to a waiver because [REDACTED] was successor-in-interest to [REDACTED] under state statute. Similarly, after [REDACTED] merged into [REDACTED], [REDACTED] was able to bind [REDACTED] to a waiver because [REDACTED] is the successor-in-interest to [REDACTED]. Furthermore, [REDACTED] also became successor to [REDACTED]'s right to bind [REDACTED].

This right of [REDACTED] is not a function of agency with respect to [REDACTED] group. Agency for that purpose is established only by Reg. 1.1502-77, not by state statute. [REDACTED] can bind, therefore, only those corporations in the chain of mergers which culminated in the liquidation of [REDACTED].

As successor-in-interest, [REDACTED] has not only the power to bind other corporations in the merger chain to waivers, but also liability to pay such corporations' taxes. We note in that connection that you have already obtained the consent of [REDACTED], "naming as taxpayers [REDACTED], successor-in-interest to [REDACTED], successor-in-interest to [REDACTED], relative to the tax returns of [REDACTED] and affiliates. That should be sufficient.

3. with individual liability and powers as transferee.

is not only a successor-in-interest under state statute, but also a transferee under the merger documents. Accordingly, can bind all the corporations in the merger chain to waivers, and is liable for the taxes of all of the corporations in the merger chain. To take advantage of such liability, we suggest that you obtain the consent of " " on a transferee form (977) naming as taxpayers " Inc., transferee of , transferee of and subsidiaries, relative to the income tax of and affiliates."

4. The with individual liability and powers as fiduciary/transferee to successor-in-interest entities.

The trust document transferred to The the powers and liabilities of the corporations in the merger and liquidation chain. Such corporations, in turn, had liability and powers as successors-in-interest to other entities which were lower in the merger chain under state statute. We note that you have already obtained The 's consent on a transferee/fiduciary waiver Form 977, naming as the transferee/fiduciary in connection with the tax liability of successor-in-interest to successor-in-interest to . That should be sufficient.

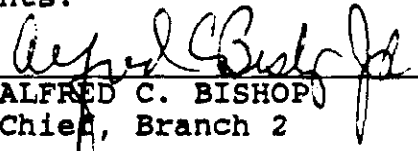
5. The with individual liability and powers as fiduciary/transferee to other transferee entities.

As we noted above, the trust document transferred to The the powers and liabilities of the corporations in the merger and liquidation chain. Such corporations had not only successor-in-interest powers and liabilities, but also transferee powers and liabilities. We therefore suggest that you obtain a consent of on a transferee/fiduciary waiver Form 977, naming as transferee " , transferee of , transferee of and subsidiaries, relative to the income tax of and affiliates."

6. Individual liability of subsidiaries which are not in the merger chain.

The consents described above are probably not sufficient under Reg. 1.1502-77(d), and therefore probably not sufficient to bind group members who were not merged directly or indirectly into . We understand that there were such members, and that they were sold to other entities outside the group. We suggest that you attempt to obtain individually the waivers of any such members.

We suggest that you send statutory notices of deficiency to, and enter into any appropriate closing agreements and 872 settlements with, both [REDACTED] and the [REDACTED]. We further suggest that you use the appropriate status language (as agent, successor-in-interest and transferee) in such statutory notices, closing agreements and 872 settlements.


ALFRED C. BISHOP
Chief, Branch 2

Enclosures